

D 3519

D 3522

Memo. No. 420.

SHANGHAI MUNICIPAL POLICE
C. & S. B. REGISTRY

D. 3519.
Headquarters, 27 H. 32.
Shanghai Municipal Police

April 26, 1932.

Criminal Gangs.

The attached opinion of the Municipal Advocate is circulated for general information. In connection therewith I shall be glad if you will give instructions which will effectually dispel the idea that Article 161 can be used indiscriminately to obtain time to investigate a case. In this respect it is necessary to point out that it is the duty of all police officers to see that sufficient evidence is available to prove (prima facie) any charge preferred against an accused person. Article 161 is no exception to this rule and as in the opinion of the M.A. it is practically impossible to convict under this article it would appear improper to use it to obtain detention for enquiries and so unnecessarily keep persons in custody until the conclusion of a case.

R. A. Miers
Deputy Commissioner
(Crime Branch)

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Deputy Commissioner
(Crime Branch)

In re ASSOCIATION OF CRIMINALS.

The question for opinion is: Are persons who associate with criminals guilty of committing a crime against the laws of China?

Mr. Burdett's translation of Article 161 of the Criminal Code provides:

"Whoever associates with any society or gang formed with the object of committing crime shall be punished with imprisonment for not more than three years or detention, or fine of not more than 500 yuan; ringleaders shall be punished with imprisonment for not less than one year, and not more than seven years."

Mr. Burdett translates the two characters Tsai Yui (參與) "associate". In an excellent Chinese-English Dictionary edited by Mr. C. Z. Tseng, the meaning of the character "Tsai" is, "to take part in, to participate, to be concerned with". The character "Yui" is a conjunction and means "with". The two characters combined, according to the above named dictionary mean "to take part in, to participate; to share; to join in".

Mr. Kung, Mr. Ru and myself do not agree with Mr. Burdett's translation. According to our opinion, the correct translation of Article 161 should read as follows:

"Whoever joins or is a member of any society or gang . . ."

Article 161 of the Criminal Code was never intended to make persons who associate with criminals guilty of crime. Before a conviction can be obtained under Article 161, it is necessary to prove, (1) the existence of a society or gang formed for the purpose of committing crime, and (2) that the accused has actually joined and/or is a member of such society or gang. According to the explanation given after this article in the official Chinese publication of the Code, it was originally intended to strike at secret societies which are formed for the purpose of committing crime. Some of these societies might be what are known as the Tsing Pong (青幫) or

the Hong Pong (紅幫). The now defunct Anti-Japanese National Salvation Society might also come within the meaning of article 161.

During my almost four years tenure as Municipal Advocate, I cannot recall having seen a judgment of the Chinese Courts in the Settlement which convicted a person of being a member of a society formed for the object of committing crime contrary to Article 161. The fact that a man is arrested in company with persons who are later convicted of crime is, of course, exceedingly suspicious, but I believe you will agree that it is not sufficient evidence to convict. In order to obtain a conviction, some concrete evidence of some other crime, or of aiding and abetting must be produced.

In this connection, I would call your attention to Article 162 of the Criminal Code which makes it an offence for persons to fail to report the crimes specified in the article before they are committed. In order to convict under this article, however, there must be proof that the accused had knowledge of the intention to commit the crime before it was committed.

Under the common law, vagrancy is an offence. Under this law, all idle or dissolute persons who have no visible means of support or lawful occupation or employment by which to earn a living are subject to punishment. Article 43, Section 1 of the Police Regulations makes it an offence to roam about without any business and to act in a questionable manner, subject to detention not exceeding fifteen days, or fine not exceeding fifteen dollars. I seriously doubt if a conviction could be obtained against a person who associates with criminals under Article 43, Section 1 of the Police Regulations unless it could be proved that he was without business and roaming about in a suspicious manner. We have

examined the law carefully but can find nothing which exactly covers the point.

It has been the custom of the police for some years, when making arrests of a large number of alleged criminals, to charge them under Article 161 and ask for a remand in order to obtain time to investigate the case.

Subsequently evidence is often obtained against some of the men arrested, but not all, of other crimes. The convictions, if any, are generally for crimes other than those specified in Article 161 or 162. I have indicated verbally to police officers from time to time that this practice should be discontinued. When arrests are made and the case is not ready for trial, the accused should not be charged under Article 161, unless there is evidence of the offence provided for in said article, but should be placed on a writ of detention. After the conclusion of the investigations, charges can be preferred in accordance with the specific crimes which the police feel they have sufficient evidence to prove. If there is not sufficient evidence an application should be made for their release.

(Signed) R. T. Bryan, Jr.
Municipal Advocate.



Shanghai Municipal Council

3519
18. 4. 32.

Office of the Municipal Advocate

April 13th, 1932.

Dear Mr. Aiers:

In re ASSOCIATES OF CRIMINALS

I am pleased to comply with your telephone request of yesterday for an opinion relative to the above entitled matter.

The question for opinion is: Are persons who associate with criminals guilty of committing a crime against the laws of China?

Mr. Burdett's translation of Article 161 of the Criminal Code provides:

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During my almost four years tenure as Municipal Advocate, I cannot recall having seen a judgment of the Chinese Courts in the Settlement which convicted a person of being a member of a society formed for the object of committing crime contrary to Article 161. The fact that a man is arrested in company with persons who are later convicted of crime is, of course, exceedingly suspicious, but I believe you will agree that it is not sufficient evidence to convict. In order to obtain a conviction, some concrete evidence of some other crime, or of aiding and abetting must be produced.

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police feel they have sufficient evidence to prove. If there is not sufficient evidence an application should be made for their release.

Inasmuch as you have raised this question, I would appreciate an order being issued so that all of the police may understand the proper procedure.

I trust that the foregoing answers your inquiry.

Yours sincerely,

R. J. Bryan, Jr.
Municipal Advocate.

R. C. Aiers, Esquire,
Deputy Commissioner,
Crime Branch.

SHANGHAI MUNICIPAL POLICE.

REPORT

H.Q.C.B. Station,

Date April 22, 1932

Subject (in full)

Attached

Made by

and

Forwarded by

Supt. Quayle

Sir,

With reference to the last paragraph on the attached opinion by Mr. Bryan I beg to report that I am entirely in agreement with his views.

In making arrests in raids for gangs of robbers, kidnapers or others there are undoubtedly a number of innocent persons arrested during the initial raids.

It is impossible to avoid this happening because every one in contact with the gang must be arrested to prevent information to the other members not arrested from leaking out.

The case has to go to Court within a few hours of the original arrests and if a specific charge is preferred it is impossible to prepare sufficient evidence in the short time at the disposal of the detectives to satisfy the Municipal Advocate or the Court.

It should not be if there is no evidence. (C.A.)
Again if a specific charge is preferred and the Police have to withdraw against certain members of the gang charged, it must leave a certain indecision in the mind of the Judge as to whether the other persons charged are guilty or not.

In the case of a Writ of Detention however the circumstances are entirely different and all in the favour of the prosecution. All the persons arrested are held in custody for some time (generally a week), during which time the detectives can complete their arrests and ascertain who are actually the guilty persons.

Charges can be prepared and persons found to have no connection with the cases can be released and not locked up on remand for an indefinite period as is often the case when a

I agree

*This is +
not dealing
with unfair
and not*

SHANGHAI MUNICIPAL POLICE.

REPORT

Station,

Date

19

Subject (in full)

Sheet No. 2

Made by

Forwarded by

specific charge is preferred.

And above all there is no onus on the Police to prove any charge against persons who are detained on the Writ of Detention.

I am, Sir,

Yours obediently,

Ja. Quayle

Supt.

D.C. (Crime)

SHANGHAI MUNICIPAL POLICE.

REPORT

"A" Div. Office ~~Station~~

Date April 19, 1932

Subject (in full) Municipal Advocate's opinion re use of Art. 161 of
C.C.R. China.

Made by _____ Forwarded by _____

Sir,

I respectfully suggest that the M. A's written opinion,
minus observations and criticism, be reproduced fully and
circulated throughout both the Uniform and Crime Branches of the
Force.

Rufel

D.D.O. "A".

D. C. (Crime).

File No.

(C.I.D.) Office Notes

April 20, 1932.

Sir,

Re Associates of Criminals.

I think it would be best to have a Crime Branch Memo issued for information of all detectives. Then Police action would be uniform. I am in favour of the use of a Writ of Detention where gangs of suspects are arrested.

*a bad practice
which should be
correctly supervised
by the local
Police*

Detectives usually prefer charging them as a Criminal Gang, as this method boosts their arrests, even if half are subsequently released, they always claim the original number of arrests. These figures do not present to the Public a true state of crime when half are later released.

for
The charge of being a member of a Criminal Gang should not be preferred unless the Police are in a position to prove same.



D.D.O. "B" Division.

D.C. (Crime)

File No. _____

SHANGHAI MUNICIPAL POLICE.

D.D.O. "C" Office,

Hongkew Station,

Date April 11, 1932.

REPORT

Subject (in full) Reference attached letter from M.A. re associates of
criminals

Made by Superintendent Aiers Forwarded by _____

Sir.

I am of the opinion that the M.A.'s explanations is quite clear regarding procedure. His argument appears very sound and I can see no reason why we should not carry out his instructions henceforth. I suggest an order be issued with explanation for same as shown in letter.

I am,

Sir,

Your obedient servant,

C. H. Aiers

D.D.O. "C".

Deputy Commissioner

(Crime Branch)

SHANGHAI MUNICIPAL POLICE.

D.D.O. "D" Office, Station,

REPORT

Date April 21st, 1932

Subject (in full)..... Criminal Gang.

Made by..... and

Forwarded by..... Supt: Conduit.

Sir :

According to the circumstances in each case, the preferring of a charge of "Being a member of a Criminal Gang" against a number of persons, or whether a "Writ of Detention" should be applied for should be left to the Investigating Officer. Both the gang charge, or the granting of a writ of detention greatly assist us in our work.

*both work are
not necessary for
the same end.
LCN*

When an Investigating Officer makes a number of arrests, he must be in possession of certain evidence, and other arrests are expected, he is in a position to bring his prisoners before the first available Court on a charge of being members of a criminal gang, under Article 161, and any subsequent arrests are charged under the same article, in fact arrests are made during the following weeks, the criminal gang charge gives him a base for all further charges, and simplifies the details of the whole case when before the Court.

*I do not
agree to
this*

When arrests have been made on very slender circumstances and the Investigating Officer wants time to obtain additional evidence before a definite charge can be made, by the Judge granting a writ of detention, he is greatly assisting us in our work. If no additional evidence can be secured the suspects are released by the Court, in fact, they were not charged, and no dismissal of the charge takes place.

*Exactly
LCN*

I am strongly in favour of preferring a "Gang Charge" against a number of persons whom the Investigating Officer can prove have acted together in committing crimes.

*I am not
in favour of
prosecuting
accused in
accordance with
law. Why not
but the
accused
should
be
dismissed
when
they
are
convicted
of a
specific
charge.*

In the event of one or two accused in a gang being dismissed for lack of evidence, that cannot be avoided, for in most cases, the circumstances of the arrest gives the Investigating Officer

*A very different
thing when the
others are convicted
of a specific crime.
LCN*

SHANGHAI MUNICIPAL POLICE.

..... Station,

REPORT

Date 19

Page 2.

Subject (in full)

Made by

Forwarded by

very little option, but to come to the conclusion that they were working with the gang.

R. Conant

D.D.O. "D" Division.

D. C. (Crime).